

**REMARKS**

Claims 1, 3, 4, 7, 13-16, and 19-40 are pending in the current application. Claims 1, 3, 4, 7, 13-16, and 19-40 currently stand rejected. Reconsideration and allowance of claims 1, 3, 4, 7, 13-16, and 19-40 are respectfully requested in light of the following remarks.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1, 3, 4, 7, 13-16, and 19-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Pat 6,938,162 to Nagai et al. (“Nagai”) in view of US Pat 5,737,286 to Timmermans et al. (“Timmermans”) and US Pat 7,266,074 to Kim et al. (“Kim”). Applicants respectfully traverse this rejection for the reasons detailed below.

With regard to claim 1, the Examiner maintains that Nagai alone teaches “copy protection indicating information **indicating whether or not the computer readable medium contains the copy protection information**” and “the copy protection information is **present depending on the indication of the copy protection indicating information**” by disclosing descramble keys and the number of descramble keys both stored in a key information area 501. Applicants respectfully submit that, under the broadest interpretation of claim 1, some copy protection indicating information must exist on the recited computer readable medium. Further, the indicating information must be capable of both 1) indicating if other copy protection information exists and 2) indicating if other copy protection information does not exist.

The number of descramble keys in Nagai cannot meet these recited requirements. Specifically, nothing in Nagai discloses or suggests the situation where **no keys, and no other copy protection information, exist**. Rather, Nagai always, in every embodiment, has a recording medium with encrypted data that requires at least one key to be present in order to decode the data. *See, e.g.*, Nagai, Col. 3, ll. 55-64; Col. 13, ll. 8-46 (description of encrypted data requiring key applicable to all embodiments); Claims 1, 6, 10-13, 20-23, 26 (all claims requiring decipher key). Thus, nothing in Nagai will ever indicate if “the computer readable medium [does not] contain the copy protection information” as the recited copy protection indication information can.

Even if Nagai were to have no decryption keys and key number (a situation Nagai never discloses or could function in), this would still fail to meet the recited “copy protection indicating information indicating whether or not the computer readable medium contains the copy protection information” because absence of a decryption key and key number cannot meet the presence of a recited claim limitation. Indeed if no copy protection information were present, Nagai would have to be somehow modified to retain a key number with no keys, in order to meet the recited copy protection indicating information. Thus, Nagai does not even academically meet the “copy protection indicating information” as recited in claim 1 and cannot be operably modified to do so.

Applicants lastly submit that, where the Examiner applies Timmermans and Kim to modify “the **copy protection indicating information** and the copy

protection information” in Nagai as “being recorded in a wobbled pattern by a bi-phased modulation method,” Applicants respectfully submit that Timmermans suggests **only encrypted content data or, at best, copy protection information** being recorded in a wobbled pattern. See Timmermans, Col. 7, ll. 9-14. Timmermans never teaches or suggests wobble-pattern recordation of the separately-recited “copy protection indicating information.” Nor is it clear from Nagai and Timmerman how the key number or keys of Nagai may themselves be recorded in a wobbled pattern and still serve a decrypting function. Thus, Timmermans lacks any teaching or suggestion of “copy protection indicating information” “recorded in a wobbled pattern” for which it alone is applied, and, further, a combination of Nagai with Timmermans impermissibly changes the function of (or makes inoperable) Nagai. This change in function is impermissible under § 103. See Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc., slip. op. 2008-1204 at 13-14 (Fed. Cir. 2009) (“the “predictable result” discussed in KSR refers not only to the expectation that prior art elements are capable of being physically combined, but also that the combination would have worked for its intended purpose.” “[Nonobviousness] would follow if the prior art indicated that the invention would not have worked for its intended purpose”) (internal cites omitted).

Because Nagai, alone or in combination with Timmermans and Kim, fails to teach or suggest every element of claim 1 and cannot be modified to do so, these references cannot anticipate or render obvious claim 1. Claims 7, 13, 19,

24, 30, and 36 are equally allowable over these references for reciting the same unique elements of claim 1, discussed above. Claims 3, 4, 14-16, and 20-23, 25-29, 31-35, and 37-40 are allowable at least for depending from an allowable base claim. Withdrawal of the rejection to claims 1, 3, 4, 7, 13-16, and 19-40 under 35 U.S.C. § 103(a) is respectfully requested.

### **CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1, 3, 4, 7, 13-16, and 19-40 in connection with the present application is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ryan Alley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

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By



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